

LEONARD LUNDGREN

IBLA 81-161

Decided March 11, 1981

Appeal from the decision of the Oregon State Office, Bureau of Land Management, denying reinstatement of terminated geothermal lease OR 11745.

Affirmed.

1. Geothermal Leases: Reinstatement -- Geothermal Leases: Termination

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence. The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

2. Geothermal Leases: Reinstatement

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment to an out-of-town destination 1 day before the

anniversary date of the lease does not constitute reasonable diligence.

3. Geothermal Leases: Reinstatement

A lack of diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Neither the longterm absence of appellant's secretary in this case nor the inexperience of appellant's other employees is a justifiable excuse for lack of payment of rental.

APPEARANCES: Alvin J. Gray, Esq., Gray, Fancher, Holmes & Hurley, Bend, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Leonard Lundgren has appealed the decision of the Oregon State Office, Bureau of Land Management (BLM), dated November 4, 1980, denying reinstatement of geothermal lease OR 11745 which was terminated for failure to timely pay annual rental pursuant to 43 CFR 3205.3-2(a). BLM found that reasonable diligence in making the payment had not been exercised and the late payment not justifiable.

The anniversary date of the lease was October 1, 1980. Appellant's payment was mailed from Bend, Oregon, on September 30, 1980, and delivered to BLM in Portland, Oregon, on October 2, 1980. In response to a BLM inquiry, the Bend postmaster reported that the standard delivery time for mail from Bend to Portland is 2 days, i.e., something mailed in Bend on September 30 ordinarily would reach Portland October 2.

In his statement of reasons, appellant explains the circumstances surrounding his late payment as follows:

Evelyn Cleveland has been my personal secretary for over 34 years and has faithfully and diligently performed thousands of functions for me. Mrs. Cleveland was required to undergo serious back surgery which kept her from doing any work from May 9, 1980 to September 22, 1980. She was able to return to our office for a few hours a day on September 23, 1980. In her absence many matters suffered. The Geothermal Lease rental billing did not come to any

responsible attention until Mrs. Cleveland found it on September 30, 1980. She forwarded the lease rental payment immediately upon finding the billing. * * * To fairly evaluate this matter, one must understand that my businesses and affairs have for years required me to place many important responsibilities on Mrs. Cleveland, which has included scheduling and meeting many deadlines. Her physical condition was beyond my control. To avoid pressure that was slowing her recovery she was ordered to stay away from her work, both mentally and physically, and this situation lasted longer than was expected. Other personnel did try to carry on for her in some areas, but in fact important matters did suffer in her absence. I do not know what I could have done differently to have avoided this situation.

He also argues that 1-day delivery service is more common and usual from Bend to Portland and notes that he received BLM's notice of return of remittance dated and mailed in Portland on October 7, 1980, in Bend on October 8, 1980. He urges that the circumstances of his payment show reasonable diligence.

Finally, appellant suggests that sections 4 and 25 of his lease were in conflict and that arguably he had to be in default of paying the rental for 30 days before BLM could act.

[1] Section 5 of the Geothermal Leasing Act, 30 U.S.C. § 1004 (1976), provides that a geothermal lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date and a terminated lease may only be reinstated if it is shown that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3244.3. The requirements of reasonable diligence or justifiable delay also govern reinstatement of oil and gas leases. Compare 30 U.S.C. § 188(c) (1976) with 30 U.S.C. § 1004(c) (1976). The regulations governing geothermal leases were generally patterned after then existing oil and gas leasing regulations. Compare 43 CFR 3108.2-1 with 43 CFR 3244.2-2. Therefore, the Board has stated that principles established in oil and gas reinstatement cases interpreting similar regulatory provisions govern cases involving geothermal lease reinstatement. Page T. Jenkins, 33 IBLA 135 (1977).

[2] Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary date of the lease to account for normal delays in collection, transmittal, and delivery of mail. 43 CFR 3244.2-2(b). Mailing the rental to an out-of-town destination the day before it was due does not constitute reasonable diligence. See, e.g., David R. Smith, 33 IBLA 63 (1977); Nevada Western Oil Co., 30 IBLA 379 (1977).

[3] A lack of reasonable diligence may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental. Ordinarily, this standard contemplates circumstances such as injury, illness, or death of the lessee or an immediate family member occurring close to the anniversary date. Louis Samuel, 8 IBLA 268, 274 (1972). In the case before us, however, it was not the lessee but his secretary who was incapacitated and then not immediately preceding the due date of his rental. The responsibility for insuring the rental is timely paid rests with the lessee. We have repeatedly held that inexperience, confusion, or lack of knowledge of any employee is not a justifiable excuse for untimely payment. Nevada Western Oil Co., supra; Phillips Petroleum Co., 29 IBLA 114 (1977); Mono Power Co., 28 IBLA 289 (1976). While we have no doubt that Mrs. Cleveland acted in a responsible manner upon her return to appellant's office, the party obligated to pay the rental was appellant and his inexperience or lack of knowledge of the lease requirements or that of his other employees does not justify the late payment. See Monturah Co., 10 IBLA 347 (1973).

Finally, as to the alleged conflict in the lease terms, we note only that the two sections each reflect a distinct provision of the Geothermal Leasing Act, supra, and the provision for termination of leases by operation of law for failure to timely pay rental and the standards for reinstatement are clear.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

